

§ 213.2

| State in which grassland is located | National grassland | Counties where located |
|-------------------------------------|---|---|
| New Mexico | Kiowa | Colfax, Harding, Mora, Union. |
| North Dakota | Cedar River Shenandoe Little Missouri. | Grant, Sioux. Ransom, Richland. Billings, Golden Valley, McKenzie, Slope. |
| Oklahoma | Rita Blanca | Cimarron. |
| Oklahoma-Texas | Black Kettle | Roger Mills (Okla.), Hemphill (Tex.). |
| Oregon | Crooked River. | Jefferson. |
| South Dakota | Buffalo Gap | Custer, Fall River, Jackson, Pennington. |
| | Grand River | Corson, Perkins, Ziebach. |
| | Fort Pierre ... | Jones, Lyman, Stanley. |
| Texas | Lyndon B. Johnson. Rita Blanca Caddo | Montague, Wise. Dallas. Fannin. |
| | McClellan Creek. | Gray. |
| Wyoming | Thunder Basin. | Campbell, Converse, Crook, Niobrara, Weston. |

[25 FR 5845, June 24, 1960, as amended at 27 FR 12217, Dec. 11, 1962; 28 FR 6268, June 19, 1963; 41 FR 38164, Sept. 9, 1976; 56 FR 8280, Feb. 28, 1991]

§ 213.2 Authority for Chief, Forest Service, to group, define, and name national grasslands.

The Chief, Forest Service, is authorized to group the national grasslands into administrative units, define, change or modify their boundaries, and to provide such specific designations therefor as he finds necessary and desirable for effective and economical administration thereof and for public and official reference thereto.

[33 FR 12370, Sept. 4, 1968]

§ 213.3 Protection, occupancy, use, administration, and exercise of reservations.

(a) The rules and regulations applicable to the national forests as set forth in title 36, Code of Federal Regulations, or as hereafter amended, supplemented, or promulgated, are hereby adopted as the rules and regulations to govern the exercise of reservations in conveyances to the United States and to prevent trespasses on and otherwise regulate the protection, use, occupancy, and administration of the National Grasslands and all other lands administered

36 CFR Ch. II (7–1–01 Edition)

by the Forest Service under the provisions of title III of the Bankhead-Jones Farm Tenant Act insofar as is practical and consistent with said act: *Provided*, That Forest Service officers may continue under delegated authority to acquire lands, to make exchanges, to grant easements and enter into leases, permits, agreements, contracts and memoranda of understanding involving such lands under such terms and conditions and for such consideration, fees or rentals as authorized by title III of the said Act.

(b) Existing valid rights, reservations easements, leases, permits, agreements, contracts and memoranda of understanding affecting these lands shall continue in full force and effect so long as they remain valid in accordance with the terms thereof.

[27 FR 9217, Sept. 18, 1962]

§ 213.4 Prior rules and regulations superseded.

Except as provided in § 213.3, the rules and regulations heretofore issued for the land utilization projects are hereby superseded as to all such projects administered by the Forest Service, but not as to such project lands administered by other agencies.

[27 FR 9217, Sept. 18, 1962]

PART 215—NOTICE, COMMENT, AND APPEAL PROCEDURES FOR NATIONAL FOREST SYSTEM PROJECTS AND ACTIVITIES

Sec.

215.1 Purpose and scope.

215.2 Definitions.

215.3 Proposed actions subject to notice and comment.

215.4 Actions not subject to notice and comment.

215.5 Notice and comment on proposed actions.

215.6 Response to comments received on proposed actions.

215.7 Decisions subject to appeal.

215.8 Decisions not subject to appeal.

215.9 Notice of decisions.

215.10 Implementation of decisions.

215.11 Who may participate in appeals.

215.12 Where to file appeals.

215.13 Appeal time periods and process.

215.14 Content of an appeal.

215.15 Dismissal of appeal without review.

215.16 Informal disposition.

Forest Service, USDA

§215.2

- 215.17 Formal disposition.
- 215.18 Appeal deciding officer authority.
- 215.19 Appeal reviewing officer authority.
- 215.20 Policy in event of judicial proceedings.
- 215.21 Applicability and effective date.

AUTHORITY: 16 U.S.C. 472, 551; sec. 322, Pub. L. 102-381, 106 Stat. 1419 (16 U.S.C. 1612 note).

SOURCE: 58 FR 58910, Nov. 4, 1993, unless otherwise noted.

§215.1 Purpose and scope.

(a) *Purpose.* The rules of this part have two purposes. First, this part establishes a process by which persons or organizations may receive notice and be provided opportunity to comment on proposed actions implementing national forest land and resource management plans prior to a final decision by the responsible official. This includes notice of and opportunity to comment on nonsignificant amendments of land and resource management plans that are made in conjunction with those proposed actions. Second, this part provides for prompt administrative review of project and activities implementing forest plans and establishes who may appeal decisions on planned actions, the kind of decisions that may be appealed, the responsibilities of the participants in an appeal, and the procedures that apply.

(b) *Scope.* The process established in this part constitutes the final administrative opportunity for the public to influence National Forest System project decisionmaking prior to implementation. The rules of this part complement, but do not replace, numerous other opportunities to participate in and influence agency decisionmaking provided pursuant to the National Environmental Policy Act of 1969, the National Forest Management Act, and the implementing regulations and procedures in 40 CFR parts 1500-1508 and 36 CFR parts 216 and 219, Forest Service Manual Chapters 1920 and 1950, and Forest Service Handbooks 1909.12 and 1909.15.

§215.2 Definitions.

For the purpose of this part—

Appeal is the written document filed with an Appeal Deciding Officer by one who objects to a decision covered by this part.

Appeal Deciding Officer is the Forest Service line officer having the delegated authority and responsible to render a decision on an appeal filed under this part.

Appeal Period is the 45 calendar-day period during which an appeal may be filed with the Appeal Deciding Officer.

Appeal Record is the information assembled and/or created during the course of an appeal and upon which review of an appeal is conducted. It consists of the decision documentation, the appeal, the Responsible Official's documentation of the informal disposition meeting, the public notice of decision document, and written comments submitted by interested parties.

Appeal Reviewing Officer is an agency official who reviews an appeal and makes a written recommendation to the Appeal Deciding Officer on the disposition of the appeal.

Appellant is a person or organization filing an appeal under this part.

Categorical Exclusion refers to a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental impact statement (EIS) nor an environmental assessment (EA) is required (40 CFR 1508.4; Forest Service Handbook 1909.15, Chapter 30).

Comment Period is the 30 calendar day period, following publication of the notice for public comment, available to interested persons to provide comments to a Responsible Official on a proposed action subject to this part.

Decision Document is the document that records the decisions for actions implementing land and resource management plans. (See also, Record of Decision, Decision Notice, and Decision Memo.)

Decision documentation refers to the decision document and all relevant environmental and other analysis documentation and records on which the Responsible Official based a decision that is at issue under an appeal filed pursuant to this part. Decision documentation may include, but is not limited to, a project or case file, Record of Decision, Decision Notice, Decision Memo, environmental assessment, finding of no significant impact, draft

§215.3

36 CFR Ch. II (7–1–01 Edition)

and final environmental impact statement, land and resource management plan, regional guide, and documents incorporated by reference in any of the preceding documents.

Decision Memo is a concise written record of a Responsible Official's decision to implement actions that have been categorically excluded from documentation in an environmental impact statement or environmental assessment (40 CFR 1508.4, Forest Service Handbook 1909.15, Chapter 30).

Decision Notice is a concise written record of a Responsible Official's decision based on an environmental assessment and a finding of no significant impact. (40 CFR 1508.9, Forest Service Handbook 1909.15, Chapter 40).

Environmental Assessment is a concise public document that provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact (40 CFR 1508.9; Forest Service Handbook (FSH), 1909.15, Chapter 40).

Environmental Impact Statement is a detailed written statement as required by section 102(2)(C) of the National Environmental Policy Act of 1969 (40 CFR 1508.11; FSH 1909.15, Chapter 20).

Finding of No Significant Impact (FONSI) is a document prepared by a federal agency presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement, therefore, will not be prepared. It includes the environmental assessment or a summary of it and shall note any other environmental documents related to it (40 CFR 1508.13; Forest Service Handbook 1909.15, Chapter 40).

Forest Service line officer is a Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions subject to this part. Specifically, for the purposes of this part, a Forest Service employee who holds one of the following offices and titles: District Ranger, Deputy Forest Supervisor, Forest Supervisor, Deputy Regional Forester, Regional Forester, Associate Deputy Chief, Deputy Chief, Associate Chief of the Forest Service, or an employee delegated the

authority to act in one of these capacities.

Interested Party is a person or organization other than the appellant that provides written information to the Appeal Reviewing Officer regarding an appeal.

Proposed action is a proposal made by the Forest Service to authorize, recommend, or implement an action on National Forest System lands to meet a specific purpose and need which is subject to the notice and comment provisions of this part.

Proposed Timber Harvest Categorically Excluded from Documentation under Forest Service Handbook 1909.12, section 31.2, paragraph 4 is timber harvest which removes 250,000 board feet or less of merchantable wood products, or salvage which removes 1,000,000 board feet or less of merchantable wood products; which requires one mile or less of low standard road construction (Service level D. FSH 7709.56); and assures regeneration of harvested or salvaged areas, where required; which normally are categorically excluded from documentation in an environmental assessment or environmental impact statement; and for which a project or case file and decision memo are required (Forest Service Handbook 1909.12, sec. 31.2, para. 4).

Record of Decision is a document signed by a Responsible Official recording a decision that was preceded by preparation of an environmental impact statement (40 CFR 1505.2; Forest Service Handbook 1909.15, Chapter 20).

Responsible Official is the Forest Service line officer who has the authority and responsibility to make decisions on proposed actions subject to notice, comment and appeal under this part.

§215.3 Proposed actions subject to notice and comment.

The notice and comment procedures of §215.5 apply only to the following actions:

(a) Proposed actions implementing national forest land and resource management plans (36 CFR 219.11) for which an environmental assessment is prepared.

(b) Proposed timber harvest as described in Paragraph 4, section 31.2 of

Forest Service, USDA

§215.5

Forest Service Handbook 1905.15 for which a project or case file and Decision Memo are required.

(c) Nonsignificant amendments (36 CFR part 219) to land and resource management plans that are included as part of a decision on a proposed action as specified in paragraph (a) of this section.

(d) Proposed actions on those National Forests which do not yet have approved land and resource management plans prepared pursuant to 36 CFR part 219 as follows:

(1) Proposed actions for which an environmental assessment is prepared; or

(2) Proposed timber harvest as described in Paragraph 4, section 31.2 of Forest Service Handbook 1905.15 for which a project or case file and Decision Memo are required.

(e) Proposed forestry research activities to be conducted on National Forest Systems lands for which an environmental assessment has been prepared.

§215.4 Actions not subject to notice and comment.

The following proposed actions are not subject to notice and comment procedures of §215.5

(a) Actions described in a draft environmental impact statement, for which notice and comment procedures are governed by 40 CFR parts 1500–1508;

(b) Actions categorically excluded from documentation in an environmental impact statement or environmental assessment pursuant to 7 CFR 1b.3 or FSH 1909.15, sections 31.1 and 31.2, except timber harvest actions as specified in §215.3(b) and (d)(2);

(c) Any action or policy not subject to the provisions of the National Environmental Policy Act and the implementing regulations at 40 CFR parts 1500–1508;

(d) Rules promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 551 et seq.) or policies and procedures issued in Forest Service Manuals and Handbooks (36 CFR parts 200, 216);

(e) A nonsignificant amendment to a land and resource management plan which is made separately from a proposed action specified in §215.3(c) and which, therefore, is subject to appeal under part 217 of this chapter.

§215.5 Notice and comment on proposed actions.

(a) *Annual notice of newspapers.* Annually, each Regional Forester shall, through notice published in the FEDERAL REGISTER, advise the public of the principal newspapers to be utilized for publishing notices required by this section.

(b) *Manner of giving notice.* (1) The Responsible Official shall publish notice of proposed actions as specified in §215.3 in a newspaper of general circulation identified pursuant to the requirements of paragraph (a) of this section.

(2) The Responsible Official also shall give the public notice of the opportunity to comment on proposed actions subject to this part as follows:

(i) For proposed actions requiring an environmental assessment, the Responsible Official shall promptly mail the environmental assessment along with a letter identifying the proposed action to any person who has requested it and to persons who are known to have participated in the environmental analysis process.

(ii) For proposed timber harvest actions categorically excluded from documentation under Forest Service Handbook 1909.15, section 31.2, paragraph 4, the Responsible Official shall promptly mail a letter briefly describing the proposed to any person who has requested notice, to persons who are on a mailing list to receive notice of this type of decision, or to persons who are known to have participated in the decision-making process.

(c) *Content of the public notice for comment on proposed actions.* All notices provided or published pursuant to this section shall include the following:

(1) The title and brief description of the proposed action;

(2) A general description of the proposed action location;

(3) Instructions on how to obtain additional information on the proposed action;

(4) The name, title, address, and telephone number of the Responsible Official to whom comments should be addressed; and

(5) The date the comment period ends (§215.6(a)).

§ 215.6

36 CFR Ch. II (7–1–01 Edition)

§ 215.6 Response to comments received on proposed actions.

(a) *Comment period.* The Responsible Official shall accept comments on an proposed action subject to § 215.3 for 30 days following the date of publication of the notice for public comment. Both oral and written comments shall be accepted. The 30-day period for comment begins on the first day after publication of notice. Saturdays, Sundays, and Federal holidays are included in computing all time periods in this section; however, when the comment period ends on a Saturday, Sunday, or Federal holiday, the comment period shall be extended to the close of business of the next Federal working day.

(b) *Submission.* Persons expressing an interest or submitting comments to the Responsible Official in response to a notice published or provided pursuant to § 215.5 shall provide the following information, which will become a matter of public record:

(1) Name, address, and (if possible) telephone number;

(2) Title of the document(s) on which comment is being submitted; and

(3) Specific facts or comments along with supporting reasons that the person believes the Responsible Official should consider in reaching a decision.

(c) *Timeliness.* It is the responsibility of persons providing comments to submit them by the close of the comment period.

(1) When comments are received, the Responsible Official shall clearly identify the date of receipt.

(2) The Responsible Official must consider all written comments postmarked or facsimile imprinted by the close of business on the 30th day following publication of the notice (§ 215.5) and all oral comments received by the close of business on the 30th day following publication of the notice.

(d) The Responsible Official shall address comments received from the public during the comment period in an appendix to the environmental assessment. For proposed timber harvest actions to be categorically excluded from documentation under Forest Service Handbook 1909.15, section 31.2, paragraph 4, public comments and responses to them shall be placed in the project file.

(e) Notes of oral comments received in response to a notice for public comment pursuant to § 215.5 shall be placed in the files and addressed pursuant to paragraph (d) of this section.

§ 215.7 Decisions subject to appeal.

Only the following decisions are subject to appeal under this part:

(a) Project and activity decisions documented in a Record of Decision or Decision Notice, including those which, as a part of the project approval decision, contain a nonsignificant amendment to a National Forest Land and Resource Management Plan (36 CFR 219.10).

(b) Timber harvest project and activity decisions as described in paragraph 4, Section 31.2 of Forest Service Handbook 1909.15 which are documented in a decision memo.

§ 215.8 Decisions not subject to appeal.

(a) The following decisions are not subject to appeal under this part:

(1) Project or activity decisions included in a Record of Decision for significant amendment, revision, or approval of a land and resource management plan, appeal of which is governed by 36 CFR part 217;

(2) Preliminary findings made during planning and/or analysis processes. Such findings are appealable only upon issuance of a decision document;

(3) Actions for which notice and opportunity to comment have been published and on which no expression of interest has been received during the comment period (§ 215.6), and on which the Responsible Official's decision does not modify the proposed action; and

(4) Decisions for actions that have been categorically excluded from documentation in an environmental assessment or environmental impact statement in FSH 1909.15, Section 31.1 and 31.2, except as noted in § 215.7(b).

(b) In addition to decisions excluded from appeal by paragraph (a) of this section, the Appeal Deciding Officer shall dismiss any appeal filed on subsequent implementing actions that result from the initial project decision subject to appeal under § 215.7. For example, an initial decision to offer a timber

Forest Service, USDA

§ 215.10

sale is appealable under this part; subsequent implementing actions to advertise or award that sales are not appealable under this part.

(c) Decisions solely affecting the business relationship between the Forest Service and holders of written instruments regarding occupancy and use of National Forest System lands can be appealed by permit holders under either 36 CFR part 251, subpart C, or this part, but cannot be appealed under both regulations.

§ 215.9 Notice of decisions.

(a) *Publication of public notice.* The Responsible Official shall publish a notice of any decision which is subject to notice and comment under § 215.3 in a newspaper of general circulation identified pursuant to the requirements of § 215.5(a).

(b) *Publication of notice of a decision.* A notice of a decision published pursuant to this section shall:

(1) Include the decision title and a concise description of the action(s) to be taken, the name and title of the Responsible Official, and instructions for obtaining a copy of the decision document;

(2) Except for decisions on which no expression of interest was received during the comment period § 215.8(4), state that the decision is subject to appeal pursuant this part and include the following:

(i) State the name and address of the Appeal Deciding Officer with whom an appeal should be filed;

(ii) Specify that an appeal must be postmarked and submitted to the Appeal Deciding Officer within 45 days of the date of publication in accordance with § 215.13;

(3) For those decisions on which no comment was received, state that the decision is not subject to appeal pursuant to § 215.8(a)(4).

(c) *Mailing decision documents.* The Responsible Official shall promptly mail the decision document to those who request the specific document and to those who submitted comments on the proposed action either before or during the comment period provided pursuant to § 215.6.

§ 215.10 Implementation of decisions.

(a) If no appeal is filed, implementation of decisions subject to appeal pursuant to this part may occur on, but not before, 5 business days from the close of the appeal filing period.

(b) If an appeal is filed, implementation may not occur for 15 days following the date of appeal disposition. In the event of multiple appeals of the same decision, the date of the disposition of the last appeal controls the implementation date.

(c) If a project is not appealable because, pursuant to § 215.8(a)(4), no expression of interest has been received and there is no change from the proposed action, implementation may occur immediately upon publication of the notice of the decision as provided in § 215.9.

(d) A project decision is not subject to a stay if the Chief of the Forest Service determines that an emergency situation exists with respect to the decision in accordance with the following provisions of this paragraph:

(1) An emergency, as defined here, is an unexpected event, or a serious occurrence or a situation requiring urgent action. Examples of an emergency include, but are not limited to, the following:

(i) Vegetation loss which presents an immediate threat of flooding or landslide.

(ii) Hazardous or unsafe situations as a result of wildfire or other circumstances.

(iii) Damage to water quality caused by siltation due to fire or flooding.

(iv) Potential loss of fish and wildlife habitat due to windstorms and blowdowns.

(v) Sudden outbreaks of forest pests and diseases.

(2) The Responsible Official shall notify the public that the Forest Service intends to handle this project as an emergency in the public notice on proposed actions as provided in § 215.5(c)(1). Actions responding to emergency situations may be accomplished with force account (Forest Service crews), service contracts or timber sale contracts.

§215.11

36 CFR Ch. II (7–1–01 Edition)

§215.11 Who may participate in appeals.

(a) Except as provided for in paragraph (c) of this section, an appeal pursuant to this part may be filed by any person who, or any non-Federal organization or entity that has met either of the following criteria:

(1) Submitted written comment in response to a project draft Environmental Impact Statement; or

(2) Provided comment or otherwise expressed interest in a particular proposed action by the close of the comment period specified in §215.6.

(b) Persons interested in or potentially affected by an appeal may participate as an interested party, as provided in §215.13(e).

(c) Federal agencies may not participate as appellants or interested parties.

(d) Federal employees filing appeals under this part shall comply with Federal conflict of interest statutes at 18 U.S.C. 202–209 and with employee ethics requirements at 5 CFR part 2635. Specifically, employees shall not be on official duty or use government property or equipment in the preparation or transmittal of an appeal. Employees also shall not use official information not yet released to the public.

[58 FR 58910, Nov. 4, 1993, as amended at 63 FR 4188, Jan. 28, 1998]

§215.12 Where to file appeals.

The Appeal Deciding Officer with whom appeals must be filed are as follows:

| If the responsible official who made the decision is: | Then the appeal deciding officer is: |
|---|--------------------------------------|
| Regional Forester | Chief of the Forest Service. |
| Forest Supervisor or | Regional Forester. |
| District Ranger | Do. |

§215.13 Appeal time periods and process.

(a) *Filing procedures.* To appeal a decision under this part, a person must submit a written appeal to the Appeal Deciding Officer within the 45 day appeal filing period specified in the public notice published pursuant to §215.9.

(b) *Computation of time periods.* (1) The day after the publication of the public notice published pursuant to §215.9 is the first day of the appeal filing period.

(2) All time periods in this section are to be computed using calendar days. Saturdays, Sundays, and Federal holidays are included in computing the time period for filing an appeal. However, when the filing period would expire on a Saturday, Sunday, or Federal holiday, the filing time is extended to the end of the next Federal working day.

(c) *Evidence of timely filing.* The appellant is responsible for submitting an appeal on or before the last day of the appeal filing period. Where there is a question about timelines of an appeal, the U.S. Postal Service postmark on a mailed appeal or the time and date imprint on a facsimile appeal will be used to determine timeliness.

(d) *Time extensions.* Time extensions are not permitted.

(e) *Interested party comments.* Interested parties must submit written comments to the Appeal Reviewing Officer within 15 days after close of the appeal filing period and are encouraged to provide a copy to the appellants at the same time. An interested party can obtain the address of the Appeal Reviewing Officer and appellants by contacting the Appeal Deciding Officer.

(f) *Time period for formal disposition.* Unless an appeal is resolved through the informal disposition process provided for in §215.16, the following time-frame and process shall apply:

(1) *Transmittal of decision documentation.* Within 15 days of the close of the appeal filing period, the Responsible Official shall transmit the appeal record to the Appeal Reviewing Officer.

(2) *Review recommendation.* Within 30 days of the close of the appeal filing period, the Appeal Reviewing Officer shall review the appeal record and forward it to the Appeal Deciding Officer with a written recommendation on the disposition of the appeal(s). The Appeal Reviewing Officer's recommendation shall be released upon issuance of an appeal decision.

(3) *Appeal decision.* Within 45 days following the end of the appeal filing period, the Appeal Deciding Officer shall issue a written decision or otherwise give notice to appellant(s) concerning the disposition of the appeal. The decision or notice shall briefly explain why

Forest Service, USDA

§ 215.16

the Responsible Official's original decision was affirmed or reversed, in whole or in part.

§ 215.14 Content of an appeal.

(a) It is the appellant's responsibility to provide sufficient written evidence and rationale to show why the Responsible Official's decision should be remanded or reversed.

(b) An appeal submitted to the Appeal Deciding Officer becomes a part of the appeal record. An appeal must meet the following requirements:

(1) State that the document is an appeal filed pursuant to 36 CFR part 215;

(2) List the name and address of the appellant and, if possible, a telephone number;

(3) Identify the decision document by title and subject, date of the decision, and name and title of the Responsible Official;

(4) Identify the specific change(s) in the decision that the appellant seeks or portion of the decision to which the appellant objects;

(5) State how the Responsible Official's decision fails to consider comments previously provided, either before or during the comment period specified in § 215.6 and, if applicable, how the appellant believes the decision violates law, regulation, or policy.

§ 215.15 Dismissal of appeal without review.

(a) An Appeal Deciding Officer shall dismiss an appeal without review when:

(1) The appeal is not postmarked or the facsimile is not date imprinted within the 45-day appeal filing period in accordance with § 215.13;

(2) The requested relief or change cannot be granted under law, fact, or regulation;

(3) The decision at issue is being appealed by the appellant under another administrative proceeding;

(4) The decision is excluded from appeal pursuant to § 215.8;

(5) The appellant did not express an interest in the specific proposal at any time prior to the close of the comment period specified in § 215.6;

(6) The Responsible Official has withdrawn the decision being appealed; or

(7) The appellant has filed for Federal judicial review of the decision and the

Chief has waived the argument in § 215.20.

(b) The Appeal Deciding Officer shall give written notice to the appellant, interested parties, and Responsible Official that an appeal is dismissed and state the reasons for dismissal.

§ 215.16 Informal disposition.

(a) *Offer to meet.* When a decision is appealed under this part, the Responsible Official must contact the appellant(s) and offer to meet and discuss resolution of the issues raised in the appeal. This contact shall be made as soon as practicable after an appeal has been filed.

(b) *Time and location of meeting.* If one or more appellants agree to meet, the meeting(s) must take place not later than 15 days after the closing date for filing an appeal. The location of the meeting shall be in the vicinity of the lands affected by the decision. When the District Ranger is the Responsible Official, meetings will generally be located on or near that Ranger District. When the Forest Supervisor or Regional Forester is the Responsible Official, meetings will generally take place at a location within or near the National Forest.

(c) *Type of meeting.* Generally, participants shall be physically present at informal disposition meetings. Where an appellant cannot attend a meeting in person because of schedule conflicts or travel distances, alternative types of meetings (such as telephone conferences or video conferences) may be arranged. This alternative type meeting also must take place not later than 15 days after the closing date for filing an appeal. The informal disposition meeting must be open to interested parties and the public.

(d) *Agreement on disposition.* The Responsible Official must notify the Appeal Deciding Officer of the names of meeting participants and the outcome of the informal disposition meeting.

(1) If the appellant(s) and Responsible Official reach agreement on disposition of the appeal, the Responsible Official shall so notify the Appeal Deciding Officer and the appellant shall withdraw the appeal by letter to the Appeal Deciding Officer no later than 15 days after the meeting. Upon notice from

§215.17

36 CFR Ch. II (7–1–01 Edition)

the appellant that the appeal has been withdrawn, the Appeal Deciding Officer shall notify the interested parties, Appeal Reviewing Officer, and Responsible Official of the conclusion of the appeal.

(2) If, as a result of the agreement reached at the informal disposition meeting, new information is received or changes to the original project decision or environmental analysis are proposed, the Responsible Official must follow the procedures in the Environmental Policy and Procedures Handbook, FSH 1909.15, section 18.

(e) *Failure to reach agreement.* If the appeal is not resolved through the informal disposition meeting, the Responsible Official shall so notify the Appeal Deciding Officer in writing. The Appeal Deciding Officer shall then advise the Appeal Reviewing Officer to proceed with formal review of the appeal.

§215.17 Formal disposition.

(a) *Formal disposition period.* The Appeal Deciding Officer shall issue an appeal decision not later than 45 days after the end of the appeal filing period.

(b) *Appeal decision.* The Appeal Deciding Officer shall complete a review based on the appeal record as defined in §215.2 and the Reviewing Officer's recommendation. The Appeal Deciding Officer shall issue a written appeal decision either affirming or reversing the Responsible Official's decision, in whole or in part, and may include instructions for further action. The Appeal Deciding Officer shall send a copy of the appeal decision to the appellant, interested parties, the Appeal Reviewing Officer, and the Responsible Official. If a formal decision is not issued, the Appeal Deciding Officer shall notify the appellant(s) of the disposition of their appeal.

§215.18 Appeal deciding officer authority.

(a) *Consolidation of appeal decisions.* In cases involving multiple appeals of a decision subject to this part, the Appeal Deciding Officer shall determine whether to issue one appeal decision or separate appeal decisions.

(b) *Procedural decisions.* The Appeal Deciding Officer shall make all procedural determinations in this part. Such determinations are not subject to further administrative review.

(c) *Appeal decisions.* The Appeal Deciding Officer's decision constitutes the final administrative determination of the Department of Agriculture.

§215.19 Appeal reviewing officer authority.

(a) *Identification of Appeal Reviewing Officer.* An agency official at the Regional Office level designated by the Chief is the Appeal Reviewing Officer for appeals of District Ranger and Forest Supervisor decisions. An agency official at the Washington Office level designated by the Chief is the Appeal Reviewing Officer for appeals of Regional Forester Decisions. The Appeal Reviewing Officer shall be an officer at least at the level of the agency official who made the initial decision on the project or activity that is under appeal and has not participated in the initial decision and will not be responsible for implementing the initial decision after the appeal is decided.

(b) *Scope of review.* The Appeal Reviewing Officer's review of decisions under this part focuses on decision documentation developed by the Responsible Official in reaching the decision, issues raised in the appeal, and comments submitted by interested parties.

(c) *Consolidation of recommendations.* In cases involving multiple appeals of a decision subject to this part, the Appeal Reviewing Officer shall determine whether to issue one recommendation or separate recommendations.

§215.20 Policy in event of judicial proceedings.

Unless waived in a specific case, it is the position of the Department of Agriculture that any filing for Federal judicial review of a decision subject to review under this part is premature and inappropriate unless the plaintiff has first sought to invoke and exhaust the procedures available under this part.

§215.21 Applicability and effective date.

(a) The requirements of §215.5 of this part to provide notice and opportunity

Forest Service, USDA

§216.3

to comment on proposed actions described in §215.3 is effective January 3, 1994.

(b) Decisions for which notice has been given pursuant to 36 CFR 217.5 prior to January 3, 1994, remain subject to the appeal procedures of 36 CFR part 217.

PART 216—INVOLVING THE PUBLIC IN THE FORMULATION OF FOREST SERVICE DIRECTIVES

Sec.

216.1 Purpose.

216.2 Definitions.

216.3 Applicability; relationship to other public participation opportunities.

216.4 Determining the need for formal public review on proposed Manual directives.

216.5 Documentation.

216.6 Notice and comment procedures for proposed Manual directives identified for formal public review.

216.7 Exemption of proposed Manual directives from normal procedures.

216.8 Availability of proposed Manual directives identified for formal public review.

AUTHORITY: Sec. 14, Forest and Rangeland Renewable Resources Planning Act of 1974, 88 Stat. 476 as amended, 90 Stat. 2949, 2958 (16 U.S.C. 1612).

SOURCE: 49 FR 16993, Apr. 23, 1984, unless otherwise noted.

§216.1 Purpose.

This part establishes procedures to ensure that Federal, State, and local governments and the public have adequate notice and opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs.

§216.2 Definitions.

(a) The *Forest Service Manual* consists of numerous volumes organized by numerically coded subject matter. The volumes contain legal authorities, responsibilities, delegations, and general instruction and direction needed on a continuous basis by Forest Service officers at more than one unit to plan and execute programs. The parent text is issued by the national headquarters and sets forth the policies, and other guidance applicable Service-wide. National directives are supplemented, as necessary, by Forest Service field offices. Supplements to the Forest Serv-

ice Manual are applicable only within the Forest Service organizational jurisdiction for which they are issued. The Forest Service Manual is revised to conform to changing law, orders, regulations, or management needs.

(b) *Public participation activities* are actions initiated by the Forest Service to facilitate an exchange of information with the public. These actions include, but are not limited to, oral and written measures such as public notices, letters, discussion papers, and gatherings such as meetings, workshops, and hearings.

(c) *Standards, criteria, and guidelines* means those written policies, instructions, and orders, originated by the Forest Service and issued in the Forest Service Manual which establish the general framework for the management and conduct of Forest Service programs.

§216.3 Applicability; relationship to other public participation opportunities.

(a) The requirements described in this part do not apply to—

(1) Rules or regulations promulgated according to the requirements of the Administrative Procedure Act, 5 U.S.C. 553;

(2) Instructions, procedures, and other material issued in Forest Service Handbooks; and

(3) Proposed Manual directives which provide guidance and procedures on administrative support activities such as personnel matters, procurement, service contracting, and other routine business operations of the agency.

(b) This part does not supersede or replace the requirements of the National Environmental Policy Act as set forth in 40 CFR part 1500 and chapter 1950 of the Forest Service Manual. The requirements described in this part do not apply where equivalent public notice and opportunity for comment on the contents of a proposed Manual directive are provided during compliance with NEPA procedures.

(c) The direction for management of many Forest Service programs is developed with public participation during land and resource management planning part 219, and other activities.